

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JEFFERY CAPERS,

Plaintiff, JOINT PROPOSED
-against- SCHEDULING ORDER

THE CITY OF NEW YORK, POLICE OFFICER
STEPHEN BABIN,

08 Civ. 3681 (RJH)

Defendants.

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1. Description of the Case.

a. Attorneys of record for each party, including lead trial attorney:

For Plaintiff: Mark L. Lubelsky, Esq.; David Gottlieb, Esq. 123 West 18th Street,
Eighth Floor, New York, New York 10011. (212) 242-7480.

For Defendants: Douglas W. Heim, Assistant Corporation Counsel, New York City
Law Department, 100 Church Street, New York, New York
10007. (212) 788-1298.

b. Basis for federal jurisdiction:

This action is brought under 42 U.S.C. § 1983 for the violation of the civil rights of the plaintiff. Defendants deny any violation of plaintiff's civil rights, but do not challenge the Court's jurisdiction over this matter.

c. Claims asserted in the complaint and any counterclaims:

Plaintiff claims that on March 16, 2007 he was falsely arrested/detained, subjected to excessive force, and assaulted and/or battered by defendant Officer Steven Babin. Plaintiff also claims that defendant City of New York failed to adequately train and supervise defendant Babin. Defendants have asserted no counterclaims.

d. Major legal and factual issues in the case:

- Whether defendant Officer Babin had probable cause to arrest plaintiff on March 16, 2007.

- Whether it was objectively reasonable for defendant Officer Babin to believe that the detention of plaintiff was justified by reasonable suspicion and/or probable cause.
 - Whether defendant Officer Babin subjected plaintiff to excessive force on March 16, 2007.
 - Whether it was objectively reasonable for defendant Officer Babin to believe that the force used in arresting plaintiff was justified.
 - Whether the City of New York was deliberately indifferent and/or negligent in its training and supervision of defendant Officer Babin, and whether any such failure to train or supervise caused a violation of plaintiff's constitutional rights.
 - Whether Officer Babin intentionally assaulted and/or battered plaintiff on March 16, 2007.
- e. **Relief sought:** Plaintiff seeks compensatory damages, and reasonable attorneys' fees as against the City of New York as well as punitive damages as against defendant Officer Babin.
2. **Proposed Case Management Plan**
- a. **All pending motions:** None.
 - b. **Date for joinder of additional parties:** October 5, 2008
 - c. **Date for amendments to pleadings:** November 5, 2008
 - d. **Schedule for completion of discovery, including:**
 - i. **Date for Rule 26(a)(1) disclosures:** September 5, 2008
 - ii. **Date for fact discovery completion:** February 27, 2009
 - iii. **Date for Rule 26(a)(2) disclosures:** March 27, 2009
 - iv. **Date for expert discovery completion:** April 27, 2009
 - a. **Plaintiff's expert report due by:** March 27, 2009
 - b. **Defendants' expert report due by:** April 27, 2009
 - e. **Date for filing dispositive motions:** June 12, 2009
 - f. **Date for filing a final pretrial order:** June 12, 2009 (unless a dispositive motion has been made)

g. **Proposed trial schedule, including:**

- i. **Whether a jury trial is requested:** The parties request a jury trial.
- ii. **The probable length of the trial:** Approximately 3-4 days.
- iii. **When the case will be ready for trial:** July 27, 2009, or 45 days following the Court's ruling on any dispositive motions.

3. **Consent to Proceed Before a Magistrate Judge:** At this time the parties do not consent to proceed for all purposes before a Magistrate Judge.

4. **Status of Settlement Discussions:**

- a. **Whether any settlement discussions have occurred:** Limited settlement discussions have taken place.
- b. **The status of any settlement discussions:** Defendants are awaiting an initial settlement demand from plaintiff.
- c. **Whether the parties request a settlement conference:** Yes.

Dated: New York, New York
September 3, 2008

Mark L. Lubelsky, Esq.
Attorney for Plaintiff
123 West 18th Street
Eighth Floor
New York, New York 10013
(212) 242-7480

By: _____

Mark L. Lubelsky

5. *A status conference shall be held on March 6, 2009 at 10:00 a.m.*

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendants City and Babin
of New York
100 Church Street, Room 3-213
New York, New York 10007
(212) 788-1298

By: _____

Douglas W. Heim
Assistant Corporation Counsel

~~SO ORDERED:~~
HON. RICHARD J. HOLWELL
UNITED STATES DISTRICT JUDGE

9/3/08